

# ATTACHMENT # 13

## Department of Human Services Rules for Eligibility Hearings

## SUBCHAPTER 5. FAIR HEARINGS

PART 1. APPEAL PROCESSES FOR PROGRAMS, EXCEPT TITLE III OF THE  
OLDER. AMERICANS ACT AND 16(B)2 INTERMODAL SURFACE  
TRANSPORTATION ACT PROGRAMS

Section	
340:2-5-1	Purpose
340:2-5-2	Definitions
340:2-5-3	Legal bases
340:2-5-4	General provisions
340:2-5-5	Programs under which client hearings may be requested
340:2-5-6	Client hearings conducted by the appeals unit
340:2-5-7	Client hearings and procedures conducted by special designated hearing officers
340:2-5-8	Handling of client complaints
340:2-5-9	Procedures relating to client hearings
340:2-5-10	Withdrawal of request for hearing
340:2-5-11	Scheduling of the hearing
340:2-5-12	Local office contact with client after receipt of appointment letter
340:2-5-13	Conduct of a hearing by the Appeals Unit
340:2-5-14	Recording of the hearing proceedings
340:2-5-15	Obtaining testimony
340:2-5-16	Presentations by the client and his/her witnesses
340:2-5-17	Presentations by the local office
340:2-5-18	Recessed hearings
340:2-5-19	Closing statement by the hearing officer
340:2-5-20	Hearing officer's summary
340:2-5-21	Decision by the State Department
340:2-5-22	Abandonment of hearing
340:2-5-23	Reopened hearings
340:2-5-24	Appeals Unit responsibility for notification of decision and assuring that decision is carried out
340:2-5-25	Action by local office following receipt of decision
340:2-5-26	Availability of hearing decisions
340:2-5-27	Administrative disqualification hearings - Food Stamp Program only.
340:2-5-28	Medical provider administrative reviews (Medicaid and Children's Special Health Care Needs (CSHCN) Program)
340:2-5-29	Hearings on licensing actions related to child care facilities and child placing agencies
340:2-5-30	Telephonic hearings

PART 3. FAIR HEARINGS FOR TITLE III OLDER AMERICANS ACT AND 15(B)2  
INTERMODAL SURFACE TRANSPORTATION ACT PROGRAMS

340:2-5-40	General provisions
340:2-5-41	Purpose
340:2-5-42	Definitions
340:2-5-43	Legal authority
340:2-5-44	Procedures relating to grantee hearings
340:2-5-45	Appeals Unit responsibility for notification of decision and assuring that decision is carried out

**340:2-5-1. Purpose**

The purpose of this Subchapter is to describe the Department's fair hearings process. Hearings are intended to:

- (1) safeguard the rights and interests of the individual clients and certain vendors of services ;
- (2) afford protection against infraction of an individual's rights on the part of the Department;
- (3) help to identify the need for clarification or revision of the Department's rules or practices; and
- (4) serve as a means for State Office review and decision on the formalized complaints or grievances of clients and vendors.

**340: 2-5-2. Definitions**

The following words and terms, when used in this Subchapter, **shall** have the following meaning, unless the context clearly indicates otherwise :

**"Access to the entire case file"** means that the appellant (client and/or his authorized representative) has the right to examine the entire contents of the case file(s) which contain the issue(s) being appealed and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well **as** during the hearing.

**"Appeals Committee"** means the following **staff** members, appointed by the State Director of Human Services: General Counsel; Supervisor of the Appeals Unit; and Assistant Director of the affected program. Any member of the Appeals Committee may listen to the tape of the hearing and such request should be made to the Appeals Unit.

**"Appeals Unit"** means the unit established within the Department responsible **for**:

(A) scheduling the time and place of obtaining testimony and other evidence from **the** client, **his/her** representative, and the **staff** members who participated in the action or delay which is being protested by the client ;

(B) conducting the presentation of this testimony and evidence ;

(C) obtaining a verbatim **recording** of the presentations; **and**

(D) preparation of the **Administrative** Hearing Officer's **Summary** and written evidence **filed** in the hearing for review and **decision** by the AHO. if he concludes **that** the Department acted correctly, or by the affected Assistant Director or Appeals Committee if the AHO concludes **that** the Department's action was **incorrect**.

**"Client complaint"** means a client's **expressed** belief **that** proper consideration has not been given to circumstances surrounding **his/her situation**. A client's complaint **may** be

expressed orally, in correspondence, or by authorizing another person to advise the Department regarding his/her grievance. A complaint may be handled to the client's satisfaction without resorting to the formal hearing process or it may result in the client's requesting a hearing. Following the local supervisory review of the client's complaint, **Form Adm-62, Report of Supervisory Review of Client's Complaint**, is prepared and routed according to instructions.

"**Client hearing**" means a formal process under which the State Office obtains evidence on which to reach a decision regarding the protested action or delay by the local office on a client's application or active case, reaches a decision, and ensures that the decision is carried out.

"**Day care provider hearing**" means a formal process conducted by the Appeals Unit whereby the day care provider can appeal a debt to the Department when an overpayment of benefits on behalf of a client(s) has been established. The day care vendor can appeal all or part of the debt.

"**Hearings on licensing actions related to child care facilities and child placing agencies**" means a hearing on a licensing action and is a process under which reconsideration is given to the Department's decision on denial or revocation of a license for a child care facility or child placing agency.

"**Local office**" means any office in any division or unit of the department which is responsible for case decisions.

"**Local staff member**" means the particular staff member who was responsible for the protested action or delay and/or who represents the Department in activities during the time period extending from the client's request for a hearing through any needed action following the decision on the hearing.

"**Medical provider administrative review**" means a provider initiated review of the Department's action on the amount of payment or disallowance of a claim under the Medicaid or the Children's Special Health Care Needs (CSHCN) Program.

"**Official report (red)**" means the official hearing report that will be made available to the appellant, upon request, at a reasonable time and place and consists of:

- (A) The administrative hearing officer's summary which contains the substance of what transpired in the hearing **unless** oral proceedings are transcribed;
- (B) **All** written evidence filed in the hearing;
- (C) **A** verbatim recording of the hearing; and
- (D) The resulting decision of the appeals **process**.

Family Support Services Division receives the notice the local office authorizes the indicated action and that Division sends one copy of the decision letter to the Appeals Unit with a notation as to the effective date of action. The Appeals Unit makes an entry in its control to indicate ~~that~~ appropriate action **has** been taken.

- | (2) **Special Health Care Needs Unit.** When the hearing is on an appeal relating to medical services (CSHCN or Title XIX) **for** persons under age 21 years, a copy of the letter of decision is **also** sent to the Special Health Care Needs Unit by the Appeals Unit. When **any** indicated action **has** been taken the Special Health Care Needs Unit routes a copy of its action to the Appeals Unit. The Appeals Unit makes an entry in its control to indicate ~~that~~ appropriate action has been taken.
- | (3) Division **of Children, Youth and Family Services/Child Welfare.** When the hearing involves an appeal in one of the CW program areas, the Appeals Unit sends a **copy** of the decision letter to the State Office CW supervisor as well as the county CW staff that were involved in the appeal. The CW **staff** take appropriate action to comply with the decision and advise the appellants **in writing** of this action. A copy of this letter is sent to the Appeals Unit and to the State Office CW supervisor. The local CW worker keeps a copy for the case record and/or the foster home or adoptive home record. The Appeals Unit ~~makes an~~ entry on their controls to indicate compliance with the decision.



340:2-5-24. Appeals **Unit responsibility** for **notification of** decision and **assuring that** decision is **carried out**

(a) **Notification of decision.** After the decision is reached in the appeals process, a written notification of decision is prepared by the hearing officer for the signature of the supervisor of the Appeals Unit. The decision letter must specify the reason for the decision and identify the supporting evidence. When applicable, the letter **shall** include statements specifying:

(1) the month that certification, recertification, reinstatement, decreased benefits, or increased benefits is to be made;

(2) the amount of benefit, or specifying that the local department will make a determination of the amount of benefit;

(3) that the sustained decision **implies** nothing as to current or **continuing** eligibility and that further determination of eligibility is required to establish current eligibility when testimony reveals changes have occurred subsequent to the protested action, which might affect a decision regarding the client's current eligibility; **and**

(4) that although the client is not sustained, evidence presented **indicates changes** have occurred subsequent to the protested action which indicate the need for a redetermination of eligibility if the client chooses to reapply.

(b) **Assuring the decision is carried out.** It is the responsibility of the Appeals **Unit** to assure itself that decisions are carried out by the **local** office by **maintaining** a control on the date each decision is rendered and the date the local office completes the action specified in each letter of decision.

(1) **Family Support Services Division.** When the hearing is on an appeal in a program administered by the Family Support Services Division (Supplemental Payments to Aged, Blind and Disabled, AFDC, medicaid, Children's Special Health Care Needs Program and Food Stamps), two copies of the letter of decision are sent to the Family Support Services Division by the **Appeals Unit**. When the

within two working days after receipt of the copy of the State Office letter setting the date for continuation of the hearing and is used as the testimony presented by the local office at the reconvened hearing. The same procedures are followed during the taking of testimony and subsequent to the taking of testimony as are used in relation to any other hearing.

(B) If the client elects not to have **all** parties reconvene, the local office prepares a written **summary** of the facts obtained during the interview, including the client's decision not to reconvene, and sends one copy to the Appeals Unit and one copy to the client. The client may, however, wish to submit additional **material** directly to the State Office.

(C) If the client elects not to reconvene and yet fails to submit material directly to the State Office, the local office notifies the Appeals Unit of the client's decision and the decision is made on the information already available.

**340:2-5-23. Reopened hearings**

When in the judgment of a majority of the Appeals Committee, the evidence presented in the hearing is so inadequate that a decision is not justified, the hearing is reopened and further information requested. When it is necessary to reopen a hearing, the Appeals Unit sends to the client and the local office a statement of the points on which information is unclear or inadequate with instructions that further investigation of these points is to be made and by whom. The client is expected to cooperate in any way necessary to obtain the desired information **and** failure to do so without "good cause" will result in the dismissal of the hearing.

(1) If the hearing is reopened for the purpose of obtaining additional medical information, the needed examination is arranged in the usual manner. If the examination is authorized by a local office, that office routes the original of the completed report to the Appeals Unit. If the examination is authorized by the State Office, **all** copies of the completed report are forwarded to the Appeals Unit by the division or unit which authorized the examination. The Appeals Unit sends a copy of the completed report to the local office in which the appeal was requested.

(2) In **all** other instances, the hearing officer **may** make a **referral** to another unit or division, or request the local office to obtain the needed information. When the additional facts are obtained, the representative of the local office interviews the client and advises him of the facts secured, the sources of the facts and how the facts relate to the point(s) at issue.

(3) The client is given an opportunity to decide whether **he** prefers that **all** parties reconvene. The client is advised of the right to submit material directly to the State Office if **he** wishes to do **so**.

(A) If the client elects to have **all** parties reconvene, the **local** office notifies the Appeals Unit by **memo** and that unit schedules a date for reconvening **all** parties. Immediately following the interview with **the** client, the local office prepares a written summary of the facts secured since the reopening of the hearing. A copy of this summary is given to the client **by** the local office

**340:2-5-22. Abandonment of hearing**

The Appeals Committee **may** authorize the dismissal of a hearing under special circumstances **which** indicate that it is impossible to hold the hearing. For **example**, when the client expresses a wish to discontinue proceedings but **refuses** to sign Appendix I of this Chapter or **when** the client dies. If the client or authorized representative **fails** to appear at the time the hearing is scheduled and **fails** to submit evidence to establish "good **cause**", the hearing will be considered abandoned on the part of the client. A hearing **may** not be considered abandoned as long as the **claimant** has provided notification, up to time of hearing, that he is unable due to "good cause" to keep the appointment **and that** he/she *still* wishes a hearing.

(1) The Appeals Committee may make any one of the following decisions :

(A) to sustain the client ;

(B) not to sustain the client; or

(C) to **dismiss** the hearing or cancel by reason of client withdrawal **or** abandonment.

(2) The decision of the **Appeals Committee on** any appeal is subject to review by the Director/Commission or by petition to district court. In such instances, benefits are not continued or reinstated **during** the review by the higher authority.

(3) **For** appeals regarding services provided under the Rehabilitation Act of 1973, as amended, refer to **OAC 340: 95**.

(4) **For** sustained **appeals** on Section 16(b)(2) of the **Urban Mass Transportation** Act, **as** amended **by** Public Law 93-87, **OAC 340:2-5-21(c)(5)**.

**340:2-5-21. Decision by the Department**

(a) **Legal base** for final decision. [56 O.S. 1981, Section 168 (C) and (D)]

(1) "Any decision of the Department rendered after a timely- filed - request ~~shall be subject to review~~ by the Director upon a timely request for review by the applicant or recipient. The Director ~~may issue~~ a decision after review or may refer the review of the hearing decision to the **Commission of Human Services**. The referral ~~shall~~ be based on criteria established by the Commission. A decision of the Department ~~shall be~~ final and binding **unless** a review is requested pursuant to the provisions of this subsection or unless appealed to the district court in which **the** recipient resides within thirty (30) days of the final agenda decision as provided by ~~the~~ provisions of subsection (D) of this section.

(2) **Any person** aggrieved by any final decision of the Department may petition the district court in which the recipient resides for a **judicial** review of the decision pursuant to the provisions of Sections 318 and 323 of Title 75 of the Oklahoma Statutes. **A copy** of the petition shall be served by **mail** upon the General Counsel of the Department."

(b) The **State Office decision**. The administrative hearing officer is responsible for reviewing the evidence and applicable policy provided by the local office. If the hearing officer concludes that the Department acted ~~correctly~~ in **taking** the adverse action, a decision letter will be immediately issued to the applicant/recipient advising of the right to appeal to the Director and/or **Commission**. If the administrative hearing officer **disagrees** with the local Department decision, the division administrator of the applicable program **will** be given five **days** to review the case, concur with the administrative hearing office? or request that the Appeals Committee be convened to decide ~~the~~ issue. The decision is based **only** on **testimony** and exhibits introduced at the hearing, **including** the **Hearing Officer's Summary**, and any supplemental material requested by the Appeals Committee. **The** decision is made on the situation **as** it was at **the** time the appealed action **was** taken by the local office or the appealed delay occurred.

**340:2-5-20. Hearing officer's summary**

**As** soon as practical after the hearing officer closes the hearing, a hearing officer's summary is prepared by the hearing officer. The **summary** consists of what transpired in the hearing including testimony and written evidence introduced into the record of the hearing. Proceedings are transcribed in the event **any** party ~~m~~akes a request at the time of the hearing. The transcription also becomes part of the material basis for the decision. If the hearing officer does not agree with the Department's action the evidence is routed to the division administrator of the affected ~~program~~ to either make a decision to concur with the administrative hearing officer or to request that the Appeals Committee be convened to decide the issue. The only exception for preparation of the hearing officer's *summary* is in the event any party makes a request at the time of the hearing that the proceedings **be** transcribed. In this situation, the transcript of the hearing and the written evidence introduced into the record of the hearing constitutes the official record of the hearing.

**340:2-5-19. Closing statement by the hearing officer**

After testimony is given by and on behalf of the client and by the representative of the local office and any "cross examinations" have been completed, the hearing officer inquires whether there is any additional testimony to be presented. If so, this information is elicited by the hearing officer. If the hearing is being recessed the hearing officer explains the reason(s) for the recess and the responsibilities to be carried out by the client/local office before the hearing is reconvened. The hearing officer will be responsible for setting the date on which the hearing will be resumed and for notifying the client and the local office.

(1) If the hearing is not being recessed, as soon as all pertinent testimony has been presented the hearing officer makes a closing statement in which he/she explains that:

(A) any one of several decisions might be reached (and the hearing officer explains what these possible decisions are based upon this type of hearing) ;

(B) the decision will be made within 90 days (60 days for Food Stamp Program and 30 days for the Low Income Home Energy Assistance Program, plus any delay caused by the client - failure to appear, recessed hearing, continued hearing, etc.) of the date the client requested the hearing;

(C) a letter will be sent to the client from the State Office (with a copy to the local office) stating the decision made on the hearing and the reasons for the decision; and

(D) the local office will be responsible for taking whatever action is required to carry out the decision made on the client's hearing.

(2) The hearing officer then closes the hearing.



340: 2-5-18. Recessed ~~hearings~~

At any point during the ~~taking~~ of testimony that there is a clear need for ~~allowing~~ additcnal time before proceeding with the taking of testimony, the hearing officer may recess a hearing for a reasonable period of time. Since postponements are costly both in time and travel, this procedure is not used unless the information sought seems essential to a proper decision and cannot be obtained without a recess.

340:2-5-17. Presentations by the local office

The person representing the local office is, whenever possible, the staff member who is familiar with and was involved in the protested decision or delay. The evidence is presented in the form of written testimony prepared in advance and a copy provided to the client. The summary presented by the local office must contain a verbatim recording of the Department's policy or policies which relate to the point(s) at issue.

340:2-5-16. Presentations by the client and his/her witnesses

The client is provided opportunity to present evidence in any way desired. The client may elect to present evidence himself/herself, have a relative or friend present the evidence and/or bring witnesses to help establish pertinent facts, ask for substantiation of any statements made by other witnesses and present evidence in rebuttal. Legal counsel is unnecessary, but the client may be represented by legal counsel if he/she so desires.

**340:2-5-15. Obtaining testimony**

The hearing proceeds on the basis that there has not been any previous action on the case and the case has come to the Department for an original determination. As initial testimony, the hearing officer requests from the representative of the local office and from the client, a brief statement of the reason(s) for the appeal of the local office's action or failure to take action. The hearing officer then makes a brief summary of these statements in order to define the point(s) at issue.

(1) The hearing officer is then responsible, before taking further testimony, for explaining that any presentation by or on behalf of the client must be related to the point(s) at issue and advising the representative of the local office that information presented must be confined to the factual information and verifications used in reaching the decision made by the local office on the point(s) at issue.

(2) It is the responsibility of the hearing officer to aid in the development of the statement of facts relative to these points. When opinions of a subjective nature or expert opinions of a technical nature are relevant, the hearing officer elicits information which will indicate the competence of the persons making these statements. For example, if the point at issue has to do with need as affected by a property resource, it is necessary to establish that the testimony, whether direct or quoted, is given by a person qualified to speak with authority concerning the type of property involved.

(3) There may be times when the hearing officer will need to protect a client from a person who dominates the situation against the client's wishes. Every effort is made by the hearing officer to assist all parties to bring out information which will clarify the issue(s) involved. During the hearing, the hearing officer affords both the client and the representative of the local office opportunity to establish all pertinent facts and circumstances, to advance any arguments without undue interference, to refute any testimony and evidence, and to confront, question and cross examine any witnesses who furnished evidence upon which the Department relied in determining the individual's eligibility. Care is taken by the hearing officer to ensure accuracy and clarity of all materials used as testimony or exhibits.

**340:2-5-14. Recording of the hearing proceedings**

The hearing officer is responsible for arranging for a verbatim record of the proceedings of the hearing. The hearing officer's record of the hearing is the official record. However, the appellant can provide his/her own recording device for use during the hearing if he/she chooses to do so. The oral proceedings or any part thereof shall be transcribed on request of any party.

(1) The record of the hearing shall include but shall not be limited to:

- (A) all pleadings, motions and intermediate rulings;
- (B) evidence received or considered ;
- (C) any decision, opinion, or report by the hearing officer presiding at the hearing; and,
- (D) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(2) If a request for further administrative/court review is not made within 30 days from the date of the decision letter, the tapes used in the recording of the official record of the hearing are erased for use in subsequent hearings.

except ~~as~~ to criminal proceedings brought ~~against~~ the applicant or' recipient under the penal provisions of this Act, with respect to any application or proceedings before the Department or Commission, whether such fee or charge be paid by the applicant or recipient or any other person."

-- (5) When the hearing involves an applicant ~~for~~ or a recipient ~~of~~ Medicaid, ~~Children's~~ Special Health Care Needs Services, State Supplemental Payment for Aged, Blind and Disabled, and/or Aid to Families ~~with~~ Dependent Children, all persons presenting evidence ~~are~~ to be advised by the hearing officer of 56 O.S. Supp. 1980, Section 185, which provides that "...whoever receives or attempts to receive, ~~or~~ assists another person to receive, benefits by means of a false statement or misrepresentation or by other fraudulent means ~~shall~~, upon conviction, be subject to criminal prosecution." If the hearing involves Food Stamps, all individuals ~~appearing~~ to give testimony are advised of the same responsibility which is outlined in 56 O.S. Supp. 1980, Section 243.

**340:2-5-13. Conduct of a hearing by the Appeals Unit**

All hearings scheduled by the Appeals Unit are conducted by one of the hearing officers **assigned** to ~~that~~ unit. In order that the confidential nature of case material and the relationship between the client and the Department be maintained, the hearing is not open to the public. ~~Persons~~ Persons permitted to attend the hearing in addition to the client, the representatives of the local office **and** the hearing officer, are those persons invited by these parties **or** authorized by the State Director **as** representatives **or** witnesses.

(1) A pre-hearing conference is conducted by the hearing officer prior to the **formal** beginning of each hearing of record. The purpose of the pre-hearing conference is to cut down on the actual amount of time spent in the hearing. It provides an opportunity **for all** parties to identify witnesses, identify **all** exhibits including those exhibits brought to the hearing and to briefly identify the issue to be discussed in the hearing.

(2) The hearing is conducted by the hearing officer in an informal manner and atmosphere, even though an oath is administered by the hearing officer to the client, witnesses and the representative of the local office. The following form is used for the **oath**: "Do you solemnly swear (**or** affirm) that the evidence you give in this **case will** be the truth, the whole truth, and nothing but the truth".

(3) In hearings in which a client (appellant) is assisted by an interpreter, the hearing officer ~~will administer~~ an **oath** to the interpreter. The following form is used for the **oath**: "Do you solemnly **swear** (**or affirm**) that you will truthfully translate **from** English into (state the other language) the questions about to be asked, and from (state the other language) into English the **answers** about to be given in the **case** to the best of your **ability**".

(4) When the hearing involves an applicant for **or** a recipient of financial **assistance**, **all** persons presenting evidence are advised of the provisions of 56 O.S. 1981, Sec. 182, of the **Oklahoma Social** security Act, which states: "It **shall** be unlawful for **any** person to charge **or** receive any fee for representing **an** applicant for, **or** recipient of assistance, under the provisions of the Act,

one of the required documents to the Appeals Unit within a reasonable time **following** the date **of** the client's request for a continuation so that "good cause" **may** be determined, **may** result in dismissal of the request **for a hearing**. If "good cause" is established, the Appeals Unit **will** notify the client **or** authorized representative **and** the **local** office of the **new** date **that has** been set **for** the **hearing**. If "good cause" **is not** established, the Appeals Unit **will** **notify** the client or authorized representative **and** the **local** office **of** the **dismissal** of the hearing.



**340:2-5-12. Local office contact with client after receipt of appointment letter .**

Upon receipt of the notification that a hearing has been scheduled, the representative of the local office contacts the client and gives him/her and/or the authorized representative a copy of the hearing summary and all documents and records which the local office will present at the hearing, for his use before and during the hearing. The local office will also submit a copy of the hearing summary and any attachments to the Appeals Unit for use by the hearing officer at the time of the hearing. The appellant (client and/or authorized representative) also has access to the entire case file except in DCYFS, see OAC 340:2-5-4(a) and for psychological and psychiatric records as noted in 340:2-5-6(8)(D). At this contact, the authorized representative also determines the client's plans of keeping the hearing appointment. If it is learned the client or authorized representative will be unable to keep the appointment, the local office advises the Appeals Unit of the reason and of the date which the client or authorized representative will be available. If in the judgment of the hearing officer the reason for not keeping the appointment is based on good cause, i.e., beyond the control of the client or authorized representative, the hearing officer will reschedule the hearing.

(1) Good cause may be established on the basis of the following qualifying factors:

- (A) death in the family;
- (B) personal injury or illness which reasonably prohibits the claimant from attending the hearing;
- (C) court subpoena; or
- (D) sudden and unexpected emergencies .

(2) Basis for "good cause" due to illness on the part of the client or authorized representative should be supported by a doctor's certificate. If based on any other reason, it should be supported by an affidavit signed by a person other than the client or authorized representative. The affidavit must be signed before a notary public or other person authorized to administer oaths. Failure to submit

hearsay evidence since the affiant is not present at the hearing or subject to cross examination. The ~~affirmed~~ and the hearing officer ~~may~~ wish to determine the degree of relationship, if **any**, between the affiant and the person providing the affidavit.

(6) The local office will submit the Hearing **Summary** to the Appeals Unit. The hearing officer will then enter the **summary** in to the official **record** of the hearing and mail a copy of the **summary** to the client with an attached letter notifying the client of the ~~right~~ to submit affidavits in response to the summary **as** well as the right to submit other affidavits supporting his/her own position. The client will be given ten calendar **days** to submit affidavits to be considered in the hearing. **This** time limit ~~may~~ be extended if the client establishes "good **cause**" for some delay beyond his/her control. If the affidavit is not received within a reasonable time the Appeals Unit **will** render a decision on the **basis** of the available evidence.

(7) When an affidavit is offered into evidence, the local office must have the opportunity to examine the document **as** well **as** the opportunity to offer evidence in explanation or rebuttal of the affidavit.

(H) an invitation for the individual to raise any questions regarding the information in the letter with the name, address and telephone number of the office responsible for the action or lack of action being appealed.

(2) Unless notified otherwise on Appendix- G of this Chapter, the Appeals Unit schedules the place of the hearing ~~as~~ the **local** office.

(3) When **two** persons in one family or household are receiving separate payments and both wish to request a hearing on an action which affects both cases **or** payments similarly and **which** arose from the same issue, each person signs **a** separate Appendix G of this Chapter. The Appeals Unit upon receipt of the two forms, registers the requests and schedules both hearings on the same day in the same place to be held either consecutively **or** jointly, according to the wishes of the clients.

(4) When more than one client requests a hearing solely on the basis of Department policy, the Hearing Officer may schedule a **single group** hearing. When a single **group** hearing is scheduled on **such** an issue, **all** policies and procedures governing client hearings **are** followed and each client is permitted to present **his/her** own case. In such a situation, each individual **has** the right to withdraw **from** the **group** hearing in favor of an individual hearing if so desired.

(5) If the applicant or recipient moves from **Oklahoma** to another state and requests a **fair** hearing in a timely manner the hearing is scheduled in one of two **ways**:

(A) the client **is** advised of the right to return to **Oklahoma** to attend a scheduled hearing. In **this case**, the hearing **is** scheduled and conducted in the **same manner as** a client **that** continues to live in **Oklahoma**.

(B) The client **is** advised that the evidence to be presented in the appeals process **may** be done by affidavits. This is the least desirable method of obtaining evidence **as affidavits** do not require authentication, although the affidavit must be **sworn** to before a person authorized to take oaths and acknowledgements. An affidavit is considered **as**

340:2-5-11. Scheduling ~~of~~ the hearing

Upon receipt of Appendix G of this Chapter by the Appeals Unit, that Unit registers the request, and the Appeals Unit Supervisor assigns the request to an Hearing Officer within the Unit and sets a date for the hearing. The Unit then mails the client an appointment letter (Form H-S-6). Copies of this notification are routed to the local office and to supervisory staff as appropriate. The notification is mailed not less than eight days (ten days for food stamps and DCYFS - CW appeals) prior to the date set for the hearing, in order to provide sufficient time for the client to have time to review the testimony prepared by the local office and to prepare his/her own testimony.

(1) The letter to the client from the Appeals Unit gives the following:

(A) the name of the hearing officer who will conduct the hearing;

(B) the date, time and place of the hearing;

(C) a request for the individual to have ready at the time of the hearing any evidence he/she wishes to present;

(D) a statement regarding the individual's right to have other persons attend the hearing to give testimony;

(E) a statement of the client's and/or his/her authorized representative's access to the entire case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing, as well as during the hearing; (except in DCYFS; see 340:2-5-4(a) and for psychological and psychiatric records as noted in 340:2-5-6(8)(D)).

(F) a statement that failure to appear at the scheduled hearing without "good cause" will result in dismissal of the hearing request;

(G) an explanation of how consideration of "good cause" can be requested; and

(D) there has been a change in the Department's policy, which will result in local office action, which is satisfactory to the client.

**340:2-5-10. Withdrawal of request for hearing**

If at any time after an individual signs Appendix G of this Chapter requesting a hearing and prior to receipt of the Department's decision on the hearing, he/she decides to withdraw the hearing request, he/she is requested to sign Appendix I of this Chapter, Withdrawal of Request for Hearing. The original of the appendix is forwarded by the local office to the State Office, Attention Appeals Unit. This procedure is followed even though the decision to withdraw the request is made before the signed Appendix I of this Chapter which the individual has signed is submitted to the State Office. In such instance, Appendix I is attached to Appendix G of this Chapter and submitted to the Appeals Unit. If the client expresses a wish to withdraw the request for the hearing but refuses to sign Appendix I, the local office prepares a memo outlining the reason(s) for his/her refusal to sign Appendix I, and submits to the Appeals Unit. In such instances, the Appeals Committee may consider his/her request for withdrawal of the hearing as an abandonment. In such instances, the Appeals Unit will advise the appellant by letter of the Department's decision.

(1) If the individual making a complaint accepts the local office's explanation and decides not to make a request for a hearing, Appendix I of this Chapter is needed.

(2) A client's decision to withdraw a hearing request will occur most frequently when :

(A) the client accepts the local office's decision as the only possible one under current policy and he does not wish to continue with the hearing on the Department's policy;

(B) the client accepts the local office's explanation that its decision was not correct and it is possible to make an adjustment satisfactory to both the client and the local office;

(C) the local office explains that an adjustment can be made which is satisfactory to the client as a result of a change in the client's circumstances; or

(K) In some instances, the local office decision that is being appealed was based in whole or in part on information obtained by another unit. When such is the situation, the local office incorporates the information so obtained into the hearing *summary* in the same manner that information obtained by the local office is incorporated into the *summary*. The supervisor of the local staff member is responsible for review of these materials for completeness and for pertinence to the point(s) at issue. When these materials are in final form, a copy is made to have ready for delivery to the client as soon as a copy of the notification of the hearing date is received from the Appeals Unit. All copies of the *summary* are kept in the local office until the *hearing* is scheduled. Even though local staff assigned to the Field Operations Division are not responsible for the final eligibility decision on Individual and Family Disaster Grants, these staff members do collect the information on which decisions are made and are therefore, responsible for preparation of the *Hearing Summary* and for presentation of it at the hearing.

obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(H) Appendix G of this Chapter is sent to the State Office in accordance **with** instructions for the appendix.

(I) When the appeal is based on a delay in decision, the local office includes in a **memo** the reason for the delay in decision and attaches the **memo** to Appendix G of this Chapter and submits the **memo** and Appendix G to the State Office, Attention Appeals Unit. See **DHS Appendix K-1, Guide for Preparation of a Hearing Summary**, for information to be included in the memo.

(J) As soon as a request **for** a hearing is received, the local staff member responsible for the case prepares the written testimony in the **form** of a **summary** and copies of any documents and records **which** will be presented by the local office at the hearing. The hearing **summary** is a document prepared by the local office stating the reasons for the local office action **or** inaction. It provides the client with information needed to prepare his/her case for the hearing.. At the time of the hearing, the hearing **summary** is introduced into the record of the hearing by the hearing officer. There are **six** areas to be covered in the hearing **summary** and they are described in detail in **DHS Appendix K-1**. The basic areas are:

(i) Type of decision, action or inaction on the part of the local office.

(ii) Nature of client's complaint.

(iii) Point at issue - exactly what the client is appealing

(iv) Chronological **summary** of pertinent events and evidence leading to the action or inaction.

(v) Verbatim quotations from the manual regarding the policy on which the decision **was** based.

(vi) Evidence and pertinent documents supporting the action of the local office.



(E) It is also explained that an opportunity will be given at the time of the hearing to give all the evidence on the points at issue that helshe believes necessary **and** that the evidence can be presented in any way and by anyone helshe desires. The appellant is to be told that transportation equivalent to the rate for public transportation is paid for the client and witnesses, if any, when **essential** for attendance at the hearing. The client ~~may need help in knowing ways in which to~~ present evidence and, if so, is advised regarding some of the **ways** in which this may be done, such as presenting evidence orally, in writing **or** by having anyone helshe chooses present the evidence for him/her. The client is advised of the right to be represented by legal counsel if desired, but **that** the Department does not make payment for legal services in connection **with** a hearing. However, if free legal services are available in the community which can provide legal representation at the hearing, this is explained and, if helshe wishes, a referral in writing is made to the legal resource.

(F) A determination **will** be made by the interviewer **as** to whether it **will** be convenient for the client to have the hearing in the local office. If this is not convenient, **the** hearing is held in the client's home **or** another location which the client and interviewer **agree** provides the necessary convenience and privacy. The place for the hearing is to be entered on Appendix G of *this* Chapter.

(G) When the client requests a hearing on a medical decision helshe must be advised of the right to introduce **as** evidence at the hearing the report of any examination helshe **may** have had on his/her own **initiative** provided the findings **are** recorded **and** signed by **his/her** examining physician. Medical evidence which **was** considered in establishing the decision is presented at the **hearing in the form of a written summary**. Opinions and comments offered by the county office responsible for the decision **are** included only **as** needed to interpret the **diagnosis** in terms of work and activity tolerance. When **the hearing** involves medical issues such as those concerning **a diagnosis, an examining physician's report, or a medical review team's decision**, a medical assessment other **than** that of the person or persons involved in ~~making~~ the original decision **shall** be

client and/or authorized representative **and** the local office. Otherwise, a face-to-face hearing will be scheduled and conducted by the Appeals Unit.

(C) **An** explanation is given that the request for a hearing will be sent to the State Office and a letter will be sent from that office regarding the date, time **and** place of the hearing. The client is also told that:

(i) the client and/or an authorized representative have access to the case file and all documents and records except for psychological and psychiatric records as noted in 340:2-5-6(8)(D) to be used by the agency at the hearing at a reasonable **time** before the date of the hearing, as well as during the hearing;

(ii) after receipt of **the** notification that the **hearing** has been scheduled **helshe** will receive a copy of the hearing **summary**, documents and records the local office will present at the hearing;

(iii) the testimony given by the client, his/her witnesses and the local office **will** be taken by a hearing officer from the State Office;

(iv) a recording of the testimony **will** be made; and

(v) **helshe will** receive a written decision of the Appeals Committee.

(D) If the issue concerns a food **stamp** case, the household is advised **that if** necessary, they may request and are entitled to receive a postponement of a scheduled **hearing**. The household is advised that the postponement **shall** not **exceed** 30 days and **that** the time limit for action on the decision **will** be extended for **as many** days as the **hearing** is postponed. If the appellant, such as a migrant **farm** worker, plans to move from the state before the hearing decision would normally be reached (**60 days**), the appellant **is** advised that the processing of the **hearing** will be expedited in order that a decision **may** be rendered before **helshe** leaves the state.

and to other appropriate personnel assigned to the program involved.

(C) If a client first contacts the State Office rather than the local office to request a hearing, Appendix G of this Chapter is completed in the State Office in the same way that it would be completed in a local office. The State Office staff member who helps complete the Appendix routes it in accordance with the Appendix instructions.

(2) **Local office responsibility when client requests a hearing.** The local office is responsible for providing the applicant or recipient with whatever help needed and wanted in preparing the written request for a fair hearing and/or his/her testimony.

(A) If the issue involves a proposed closure or reduction, recipients of State Supplemental Payment to the Aged, Blind, Disabled, Aid to Families with Dependent Children, Social Services, Medical Assistance, and Food Stamps are advised of *the* option of having benefits continued pending outcome of the hearing if they appeal within ten **days** of the date of the advance notice. They are advised that if they request benefits be continued during the appeals process and the hearing is not decided in their favor, a claim will be made against them for all benefits received during the process of the hearing. They are **also** advised that if they fail to indicate a preference on an appeal filed within the ten day advance notice period, benefits **will** be continued during the hearing process and if the hearing is not decided in their favor, a claim will be made against them for all benefits received during the process of the hearing. If the client elects to accept the proposed reduction in benefits, it is explained that if the appeal is decided in his/her favor, the local office will authorize supplemental payment(s) for *the* period of time covered during the appeal.

(B) The provision for telephonic hearings is to make the fair hearing system more accessible to applicants and recipients and to facilitate prompt action on hearing requests and decisions. However, telephonic hearings will be conducted only if the local office is equipped with speaker phones and it is mutually agreed upon by the

340:2-5-9. Procedures relating to ~~client~~ hearings

The procedures in this Section apply to any hearing to be scheduled by the Appeals Unit, conducted by the Appeals Unit, and voted on by the Appeals Committee. Once the client ~~has~~ requested a hearing before the Department, the hearing is not delayed ~~or~~ cancelled for any reason other ~~than~~ withdrawal in writing or abandonment of the request by the client.

(1) Request for a client hearing. The client or person acting in his behalf makes a written request for a hearing by completing Appendix G of this Chapter, Request for a **Fair** Hearing, so there will be no lack of understanding as to the point(s) at issue. The Appendix is signed by the client, his authorized representative, legal guardian, legal conservator or legal representative. However, if a client wishes to request a hearing in the Food Stamp Program but is not willing to put his request in writing, see OAC 340:50.

(A) The date of any hearing request is the date the client or person representing him/her first expresses the desire for a hearing. The client usually completes Appendix G of this Chapter in the local office that was responsible for the protested action or delay and is left with that office. If the client moves to another county and is living outside the jurisdiction of that office at the time he/she expresses a desire for a hearing, the office responsible for the program in the county of the client's current residence acts for the office in the county where he/she formerly lived.

(B) The office in which Appendix G of this Chapter is completed is responsible for transmitting the Appendix to the Appeals Unit in the State Office not later than the first working day following the date of the client's signature. If the client wishes to complete Appendix G away from the local office, he/she may do so but is asked to return all copies to the local office for proper routing. In the event the client prefers to mail the forms to the State Office, he/she is given an envelope addressed to the State Office and showing the client's return address. When the local office knows that the client plans to forward the form, his/her intention is reported to the Appeals Unit so that copies of the request, when received, can be routed to the local office

(6) Assure that appropriate help is provided the client in ~~completing~~ a written request for a hearing if ~~helshe~~ wishes to make a formal appeal.

(7) Complete Form Adm-62, Report of Supervisory Review of Client Complaint.

(c) ~~In the State office.~~ A complaining client ~~may~~ decide before ~~making~~ a request for a hearing, to make a personal contact with the State Office. A State Office staff member ~~may~~ not be able to fully answer the client's questions as the State Office may not have current **information** regarding the situation. In such instances, a telephone call ~~may~~ be made to the local office to secure the details of the situation. State Office interviews with a client are confirmed to the local office. If a local **staff** member is told by a client that a visit to the State Office is planned, the local worker should notify the appropriate division or unit and provide current information on the client's situation. Written complaints received in the State Office **are** acknowledged in **writing** to the client. A copy of the complaint and of the acknowledgement ~~ere~~ forwarded to the local office. Usually the reply from ~~the~~ State Office will suggest that the complainant ~~call~~ at the local office for further discussion of the situation, **thus placing** on the local office the responsibility for interpreting the **action** or lack of action.

(1) The facts presented in the written complaint to the State Office ~~may be~~ sufficiently clear to validate the decision of the local office. If so, the State Office reply ~~can~~ further corroborate and strengthen the local office's interpretation of policy. If the complainant ~~or inquirer~~ is not a client but a person to **whom** interpretive material could constructively **be** given, the reply from the State Office ~~may have~~ fuller content ~~than is ordinarily the case in~~ the interest of **furthering** public relations **and information**.

(2) When the original complaint letter **calls** for a specific answer ~~from~~ the State Office but sufficient **information** for reply is not available or **there** is probability of future contacts, the State Office ~~may~~ request a current **report** ~~from~~ the local office-

interpretation of the Department's function and policy is called for since the complainant has not been able to accept his/her present concepts of them. In general, the staff member responsible for the case is responsible for the first contact with the client regarding his/her complaint. If the client is not completely satisfied with **this** explanation, the person administratively responsible for the office is responsible for arranging--a client interview with an administrative or supervisory staff member. **This** interview should be used to clarify the point(s) at issue, interpret Department policy, and give the individual an opportunity to present any additional facts. There should be no attempt to deter the individual from making a request for a hearing. It is the responsibility of any local staff member to whom the complainant is referred to review the case record, interview the client and:

- (1) Determine whether changes have occurred subsequent to the protested action or delay. If it appears a change has occurred, the client is advised regarding the action, if any; which the local office can take (reapplication, adjustment in grant, obtain additional information).
- (2) Evaluate jointly (with the client) the facts involved as they relate to the Department's policy applicable to the complaint. On the basis of the evaluation, determine whether facts have been properly explored and whether policy has been properly applied.
- (3) If policy has not been properly applied or it appears facts have not been properly explored or evaluated, advise the client regarding any action the local office can take such as reapplication, retroactive certification, retroactive increase, reinstatement, obtain additional information, etc.
- (4) Determine, when applicable, whether facts indicate a need for reconsideration of any type of eligibility decisions made in the State Office such as medical, etc. If additional information is obtained or a change has occurred the client is advised regarding action which the local office can take to secure a reconsideration.
- (5) If the request or complaint cannot be resolved to the client's satisfaction, explain the procedure for a further hearing.

**340:2-5-8. Handling of client complaints**

(a) **Inquiries.** Not all client inquiries or requests for explanations received in the local office of the State Office are complaints. Many such requests are for information regarding the Department's policies in relation to the individual's situation while others are actually complaints. All explanations to a complaining or inquiring client by any staff member should be for the sole purpose of clarification of any areas in relation to the inquiry or complaint. The "complaints" should be distinguished from the normal "requests" made by a client which are handled within the regular relationship between client and worker or counselor.

(1) If a satisfactory adjustment of a request can be made between the client and worker or counselor, information regarding the request and the solution is recorded in the case record.

(2) It is when a satisfactory adjustment cannot be made within this relationship that the local office is responsible for assuring that the dissatisfied individual is provided a supervisory review of his/her situation. A supervisory review is an informal process through which an applicant or recipient, his/her parent, guardian, or representative is given the opportunity for an interview with a supervisory or administrative staff member in order to express (and seek remedy for) dissatisfaction with action or inaction in regard to delay, provision, or denial of benefits or other services. This process may be carried out in person or by telephone directly with the supervisory or administrative staff member.

(3) If the client is not completely satisfied with the explanations given during the supervisory review, he/she should be encouraged to prepare a written request for a hearing, (preferably on Appendix G of this Chapter, Request for a Fair Hearing). Immediately following the supervisory review of an oral or written complaint, all facts obtained should be promptly recorded on Form Adm-62, Report of Supervisory Review of Client's Complaint.

(b) **In the local office.** Regardless of whether the complaint is oral or written, each complaint must be considered as the occasion for further analysis of the situation. If the Department's position appears to be correct, further

resolved, the applicant or recipient may request a **fair** hearing. Such hearing will be conducted in accordance with OAC 340:95. The hearing request is in the form of a letter or **completed** OAC 340:95, Appendix G, Request for a **Fair** Hearing, Rehabilitative and Visual Services, forwarded to either the **local office**, the Administrator of Rehabilitation Services or directly to the Appeals Unit. The **fair** hearing **shall** be conducted by a hearing officer, Appeals Unit, **who will** prepare a **summary** of the hearing procedures and renders a decision which is subject for review by the Administrator for Rehabilitation Services.



**340:2-5-7. Client hearings and procedures conducted by specially designated hearing officers**

In the program listed in this Section, the hearing request is in the form of a letter to the State Director, or appropriate Assistant Director, who designates a **staff** member to serve as a special hearing officer for the hearing. Decisions on these hearings are not made by the Appeals Committee. --- --- ---

(1) **State School for the Blind and State School for the Deaf.** A hearing is granted if a parent of a child at the State School for the Blind or the State School for the Deaf is dissatisfied because of a denial of his/her request that a change be made in the educational record of his child. The detailed procedures for hearings resulting from dissatisfaction over the content of an educational record at the State School for the Blind or the State School for the Deaf are outlined in OAC 340:95-17.

(2) **Civil Rights complaints.** A complaint may be made by or on behalf of any person applying for or receiving services through the Department or against any facility from which the Department is purchasing service. All complaints regarding violations or civil rights are made in writing and forwarded to the Director of Human Services. For Food Stamp Program procedures refer to OAC 340:50. If the complaint is made to one of the local offices of the Department, the local office assists the person in making a written statement giving the pertinent factual information on which the complaint is based. The complaint is signed by the person who is formally making the complaint to the Department. When the complaint is received by the State Director, it is referred to the Department's Civil Rights Coordinator, who contacts the complainant and obtains all information possible regarding the alleged violation of civil rights. The coordinator prepares a complete written report of the situation leading to the allegation and routes it to the State Director. The final authority rests with the State Director to assure that prompt action is taken as may be necessary to correct discriminatory practices found to exist as a result of such complaints.

(3) **Vocational Rehabilitation Services.** When an applicant or recipient is dissatisfied with an action concerning the furnishing or denial of services and the issue cannot be

(IV) Failure to provide an administrative review if a judicial review or foster case review board was not held.

(iv) Denial of application to be a foster parent or adoptive parent.

(v) Closure of a foster home or an adoptive home.

(vi) Adverse decision regarding adoption subsidy.

**(8) Services for the developmentally disabled.**

(A) A services for the developmentally disabled hearing may be granted in **any** of the following circumstances:

(i) The application for services is denied;

(ii) Agency action regarding the application **has** not occurred **within** 180 days **from** the date of the agency's receipt of the application and the applicant **has** exhausted the remedies afforded by the Office of Client Advocacy; or,

(E) The client/family/guardian is aggrieved because of agency actions to suspend, terminate or reduce services.

(B) All other complaints or grievances are made to the Office of Client Advocacy **and will be** addressed in accordance **with their** policies and procedures.

(C) **Nothing** contained in this paragraph **shall be** construed as a limitation of the rights of class members regarding the review and appeal procedures set forth in the Consent Decree in Homeward Bound vs. The Hisson Memorial Center.

determine whether a decision was arbitrary or capricious.

(D) Information gathered for the **fair** hearing is provided to the Appeals Unit. The appellant **has** access to any information that is to be used in the hearing prior to the date of the hearing except for psychological **and** psychiatric records. Copies of psychological **and** psychiatric records are not made available unless the release of these records is consented to by the treating physician or practitioner or *are* ordered to be released **by** a court of competent jurisdiction upon a **finding** that it is in the best interest of a patient. Any information acquired after the notice of the adverse decision and after the request for the **fair** hearing **may** be used in the hearing process as long **as** the appellant is notified of **this** information and of the intent to use it. Such information **can** be gathered up to ten days prior to the hearing date, i.e., information from a foster child after the decision to remove the **child** from a foster home and to close the home.

(E) A hearing **may be** granted in the areas in (i) - (ii) of this subparagraph.

(i) Failure to offer or to provide appropriate pre-placement preventive services or reunification services.

(ii) Failure to provide a case plan **within** 30 days after the child is removed from the parent/legal *guardian* or 30 days from adjudication, whichever occurs first.

(iii) Failure to comply with **DHS** policy/procedure as related to the parent/legal **guardian**, including:

(I) Right to visitation.

(II) Right to access the case **plan**.

(III) Failure to provide services **agreed** on in the **case** plan.

the time the case plan [OAC 340:75, Appendix P] is initiated. Applicants for foster homes or adoptive homes shall be provided a written notice at the time of the adverse action on their application or status of their home or subsidy request. The notices [OAC 340:75 Appendices R, S and T] are signed by the parties receiving the notice and the CW worker. A copy is filed in the appropriate CW record for documentation.

(B) All CW cases that require an OAC 340:75, Appendix P have a right to a fair hearing. Applicants and approved foster parents and adoptive parents **may** have a fair hearing on certain issues. Every effort should be made at the local level to resolve matters that **may** evolve into requests for a fair hearing. The CW worker and **his/her** immediate supervisor should meet **informally** with the parents/guardians, foster parents, adoptive parents or other interested parties to try to clarify the basis for the decision **that has** prompted them to **inquire** about a fair hearing. **Fair** hearing requests **as** to adverse decisions on foster home/adoptive home applications and closures and adoption subsidy must be filed **within** 30 days of the written notices **as** to the adverse decision. Appeals regarding the elements set out in the case plan that relate to the parent/legal guardian must be made 30 days after the case plan is initiated. Failure to offer or to provide the service agreed to in the case plan for the parents/legal guardian are appealable at any time during the active case status or during the agreed upon time frames.

(C) The fair **hearing** process is **not** intended to reverse discretionary decisions by **DHS staff** unless there is a finding that the action was arbitrary and **capricious** and without a sound **basis** for the decision (i.e., inconsistent with policy/procedure and/or evidence). **DHS has** the responsibility to make decisions based on the best interest of the child. The physical, mental and emotional safety of the child must be the **overriding** basis for the decisions. **Such** decisions unavoidably involve worker/supervisor discretion which the fair hearing process must recognize. The **fair** hearing officer **may** not substitute **his/her** judgement for that of Child Welfare program staff **who** exercise **their** discretionary authority. The hearing officer's role is to

(B) a decision regarding eligibility has not been reached within 30 days of the date of application;

(C) a decision regarding loss of benefits which occurred in the previous 90 days; or,

(D) the household is aggrieved by reason of the Department's interpretation and application of food stamp policy as applied to the household's situation during the certification period, or by any other action of the Department in its administration of the program which affects the household's participation in the program, or any decision regarding overpayment.

(5) Individual and **Family Disaster Grant Program**. A Individual and **Family Disaster Grant Program** hearing may be granted for one of the **following** circumstances:

(A) the applicant's application is denied;

(B) the applicant is dissatisfied with the amount of the grant award; or,

(C) an unreasonable delay relating to the application.

(6) **Low Income Home Energy Assistance Program**. A Low Income Home Energy Assistance Program hearing may be granted if:

(A) the applicant's application is denied;

(B) the applicant is dissatisfied with the amount of the payment; or,

(C) **an** unreasonable delay relating to the application.

(7) **DCYFS - CW Services**.

(A) Grievances relating to children receiving care in **DHS** institutions **andlor** community programs are handled through the Department's Grievance Policy/Procedure, Office of the Advocate General. Issues resulting from **court** rulings are not subject to appeal in a fair hearing. Parents andlor legal guardians or relatives with whom the child is placed **shall** be provided a written notice of the right to a fair hearing at

(F) An **AFDC** applicant claims exemption from Employment Training Program by the statutory criteria.

(2) **Social services under Title XX.** A social services under Title XX hearing **may** be granted in any of the following circumstances:

(A) the individual is aggrieved because of denial of request or exclusion from a service program, failure to take account of the individual's choice of service in assignment of program, or a decision requiring participation in a service program; or,

(B) the recipient is aggrieved about the operation of the service program; or

(C) if a debt to the Department **has** been established against a client/vendor due to an overpayment of benefits on his/her behalf, the client/vendor **has** a right to request **a hearing regarding all** or part of the debt.

(3) **Medical Assistance (Title XIX or Children's Special Health Care Needs Program).** A client Medical Assistance (Title XIX or Children's Special Health **Care** Needs Program) hearing need not be granted under Title XIX when either state or federal **law** requires automatic **grant** adjustments for **classes** of recipients unless the reason for an individual appeal is incorrect **grant** computation. **Any** of the following circumstances constitute basis for a hearing:

(A) the individual's application ~~for~~ medical services is denied;

(B) a decision **regarding** eligibility has not been reached within **the** specified **time** limit from [OAC 340:30 and OAC 340:35] the date of the application; or,

(C) the **individual** is dissatisfied with any other action affecting receipt of **medical** services or with the Department's policy as applied to **his**/her situation.

(4) **Food stamps.** A Food Stamp hearing **may** be granted under any of the following circumstances:

(A) the household's application is denied;

**340:2-5-6. Client hearings conducted by the Appeals Unit**

Client hearings in the programs listed in this Section are scheduled by the Appeals Unit and the testimony is taken by a hearing officer attached to that unit. The hearing officer's summary and written evidence presented in the hearing provides basic information for the decision. If a debt to the Department **has** been established against a client due to an overpayment of benefits to him/her (or on his/her behalf) in any of these programs, he/she **has** the right to request a hearing regarding all or part of the debt. Such hearings are also scheduled by the Appeals Unit.

(1) **State Supplemental Payments for Aged, Blind and Disabled, and Aid to Families with Dependent children (including Emergency Assistance).** A State Supplemental Payments for Aged, Blind and Disabled, and Aid to Families with Dependent Children (including Emergency Assistance) hearing need not be granted in these programs when either state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal **is** incorrect grant computation. A hearing **may** be granted **in** any of the circumstances listed in (A) - (F) of *this* paragraph.

(A) There is a delay of **more** than 30 days for Aged, **45** days for Blind and AFDC and 60 days for Disabled (in reaching a decision: on an application for assistance and if eligible, the effective date of beginning of assistance;

(B) There is a delay of more **than** 30 days in **making** a decision and affecting a change regarding a request for adjustment in assistance payment;

(C) The assistance payment **has** been discontinued or suspended ;

(D) The individual is aggrieved because payment is made in the form of a protective payment or because of any action with regard to the protective payment (such as the protective payee selected, or failure to reconsider the need for a protective payment);

(E) The individual is aggrieved about conditions of payment (including the requirements for **work**, treatment, or training); or

practice law by the Supreme Court of Oklahoma, and provided further that such counsel **shall** have 'the right to appear and act for and on **behalf** of the party he/she represents.

- (b) If the client insists **on** submitting a written request for a hearing after the time limit for appeal, the request **is** accepted. **As** a means of verification that the request was not **filed** in a **timely manner**, a **copy** of the computer notice and/or **hand** written notice of the adverse action **is** attached to the request by the **local** office before submitting the request to the Appeals Unit. **The** available evidence **will** be reviewed by an **ALJ or AHO**. Upon confirmation that the hearing was not filed in a timely manner the appellant **will** be notified by letter of the **dismissal** of the hearing request. In the **programs** listed in this Chapter **the** hearing request is in the form of a letter to the State Director, **who** designates a staff member to serve **as** a special hearing officer **for** the hearing. Decisions on **these** hearings **are** not made by the **Appeals Committee**.



**340:2-5-5. Programs under which client hearings may be requested**

(a) If an applicant for or recipient of any of the programs listed in this Subchapter wishes to request a hearing, a request for a hearing must be filed within 30 days (90 days for food stamps) of the date on the written notice that advises of the decision (action) he/she wishes to protest. A hearing may be requested on a delay in action whenever the delay exceeds the action standards set for the various programs. Upon timely receipt of a request for a hearing as specified in the notice of adverse decision, the Department shall hold a hearing pursuant to the provisions of Section 310 of Title 75 of The Oklahoma Statutes. This section establishes:

(1) A standard for the admissibility of evidence including the rules of privilege recognized by law with such privileges as self-incrimination and confidential communications between husband and wife during the subsistence of the marriage relation. The Department may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. In addition, when a hearing can be expedited without loss of due process any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. However, upon request all parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct cross-examinations required for a full and true disclosure of facts;

(4) Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material notices including any staff memoranda or data, and be afforded an opportunity to contest the material so noticed. In addition, the expertise of certain Department staff may be utilized in the evaluation of the evidence; and

(5) Any party shall at all times have the right to counsel, provided that such counsel must be duly Licensed to

(F) If a mass change is made by the Department affecting most or all cases in any category and provision is made for appeal only if there is an error in computation, these cases will be dismissed by the ALJ or AHO if the basis for appeal is other than an error in computation.

(G) At the time of the prehearing conference or during the hearing the ALJ or AHO may determine that additional evidence will be needed before a final decision can be made. If so, the ALJ or AHO may continue the hearing and remand the case to the local office for reconsideration or inclusion of additional evidence before proceeding with the hearing.

(c) **Request for a hearing.** A request for a hearing is a clearly written expression by the client or his/her authorized representative of the client's desire to present testimony and evidence regarding his/her situation to the State Office and be informed through testimony and other evidence, of the basis for the action or delay on the part of the local office. All client requests for hearings must be in writing (except in the Food Stamp Program where either oral or written requests are accepted).

(d) **Day care vendor decision.** When the vendor is sustained in an appeal related to an overpayment, the local worker immediately upon receipt of the decision letter notifies the vendor and Family Support Services Division/Day Care Unit by memorandum. Family Support Services Division/Day Care Unit will complete the necessary action(s) and notify the Appeals Unit, Finance Division, Audit and Review (if appropriate) and the local office. When the vendor is not sustained in an appeal related to a day care overpayment, the local worker immediately upon receipt of the decision letter, notifies the vendor, the Appeals Unit, and Family Support Services Division/Day Care Unit by memorandum and initiates the appropriate collection procedures.

letter will advise the applicant/recipient of a right to appeal to the Director and/or Commission. If the ALJ or AHO disagrees with the Department's decision; the Assistant Director of the applicable program will be given five days to review the case, concur with the ALJ or AHO's decision or request that the Appeals Committee be convened to decide the issue.

(2) The following situations will be resolved by the ALJ or AHO:

(A) If the appellant fails to appear for the scheduled hearing and fails to submit sufficient evidence to establish "good cause" for failure to appear at the appointed time, the ALJ or AHO will issue a letter of decision at that time. The letter will advise the appellant that the request for the hearing has been dismissed and that the local office will take any action indicated on the case.

(B) If the respondent fails to appear for an administrative disqualification hearing, and fails to submit sufficient evidence to establish "good cause", the ALJ or AHO will conduct the hearing and render a decision on all cases except those that would require the attention of the Appeals Committee to reverse the decision of the Overpayment Unit.

(C) If the client or authorized representative files a request for a fair hearing and subsequently files a written withdrawal of the request before a final decision is rendered, the letter of withdrawal is reviewed and accepted by an ALJ or AHO in the Appeals Unit.

(D) If an applicant or recipient of assistance insists on submitting a request for a hearing after the time limit for a hearing an ALJ or AHO reviews the available evidence and if it is confirmed that the request for the hearing is not timely, the hearing request will be dismissed.

(E) If an applicant for assistance or service appeals on a delay in decision, the decision on this issue will be made by the ALJ or AHO. If the available evidence fails to establish that a delay in decision has occurred, a formal hearing will be scheduled.

## 340: 2-5-4. General provisions

(a) **Limitations** on access to **entire** case file. Access to the entire case file does not apply to confidential food **stamp** information [OAC 340:50], and to Child Welfare matters [OAC 340:75]. Certain documents and/or information with the **case file** are confidential and protected by state and federal mandates and are, therefore, not available to the appellant **or** his/her representative. Such protected information includes child abuse/neglect reports including the names and information from complainants, psychological and medical reports, information **from** other family members that is unrelated to the appeal, information from references and/or witnesses unless there is a written release of information. Psychological and medical reports **may** be used if there **are** written releases from both the author and the patient. When such a request is made, the local office should **make** arrangements for the client and/or his/her authorized representative to review the case file with **as** much privacy as possible. A supervisory staff member should observe the review to **assure that** a portion of the contents of the case file are not removed from the record. The client and/or authorized representative **are** free to **make** written notes from the record.

(b) **Hearing officers.** The professional staff member of the Appeals Unit who conducts a fair hearing is a person who **has** not had a part in the protested decision or delaying decision. **This** person is one that **has been** designated by the State Director to conduct the fair hearing. **An** Administrative Hearing Officer (AHO) is a member of the professional **staff** of the Appeals Unit that does not meet the qualifications as a member of the National Association of Administrative Law Judges (NAALJ). **An** Administrative Law Judge (ALJ) is a professional staff member of the Appeals Unit that meets the qualifications **as** a member of the NAALJ and is a **current** member of this national **organization**. A hearing can be conducted by either an AHO **or** an ALJ. The AHO or ALJ is responsible for preparing a written **summary** of the testimony and written evidence presented in the hearing **for** presentation to the Appeals Committee. Other responsibilities **are:**

(1) If the ALJ or AHO that conducts the hearing concludes that the Department acted correctly in **taking** the adverse action, a decision letter will be issued immediately. The

**340: 2-5-3. Legal bases**

Both federal and state laws provide for the granting of an opportunity for a hearing before the Department by an applicant for or a recipient of services provided by the Department under any of the programs listed in this Subchapter. On the basis of these statutes, a client has a right to request and **obtain** a fair hearing. In order for the client to be able to exercise this right, the Department is responsible for informing in writing, each applicant or recipient at the time of application for specified **DHS** services and/or programs and of the right to a hearing, of the method by which a hearing **may** be obtained, and that he/she may represent **himself/herself** at the hearing or be represented by an authorized representative. P.L. 96-272, the CW and Adoption Assistance Act of 1980, sets out certain benefits and services that are appealable. These include the provision of a case plan, provision of adoption subsidy, and the provision of appropriate pre-placement preventive services or **reunification** services. Certain vendors of services are also provided the right to a hearing by the Department .